

PENSIONABILITY OF EMOLUMENTS AND ALLOWANCES

The purpose of this paper is to seek comments on proposals for dealing with the pensionability of allowances paid to members of the Firefighters' Pension Scheme 1992 (FPS) and the New Firefighters' Pension Scheme 2006 (NFPS).

Background

When the 2006 Scheme was being drafted, we made clear our concern at the way in which the pensionability of allowances was being handled by fire and rescue authorities and the drafting of the Scheme reflected this. This was followed in 2007 by the introduction of Additional Pension Benefit (APB) arrangements, which were CLG's response to the phasing out of the Long Service Increment and the introduction of Continuous Professional Development payments, and was an initial attempt to bring some order to the problem.

We recently asked pension administrators within the Fire and Rescue Service to identify those elements of pay that their fire and rescue authorities regard as pensionable. From the responses we have identified that there is some disparity between FRAs, particularly in the treatment of allowances and temporary emoluments.

It is clear that the situation is becoming more confused as FRAs respond to the need for changes to meet new operational demands; and, from time to time, introduce new allowances and decide that they should be pensionable. The reasons for making such a decision are not clear. It may be that the FRA is seeking to make an allowance more attractive or provide an incentive for those who wish to apply, or qualify, for it.

Because the FPS and NFPS are unfunded schemes, additional costs for the past cost have to be met by the pension fund account and will either be paid from the top-up grant and/or by future contributions.

It may be helpful, therefore, if the principles for determining pensionable pay are set down more clearly.

Reasons for concern

The development of new allowances and the consolidation of existing allowances are creating additional pension costs which threaten the affordability and sustainability of the 1992 and 2006 Schemes.

Both the FPS and the NFPS are final salary schemes. This means that a firefighters' pension is based on the pensionable pay received in the "best" of the last three years of pensionable service.

The Government Actuary's assessment of the value of the two schemes is based on the cost of providing the benefits to be paid to an average new entrant over the course of his/her career, and the contributions paid by scheme members and employing authorities are designed to cover these costs.

Any new element of pensionable pay immediately creates a pension liability which reflects past service. A particular concern to CLG is the impact of these past service costs when scheme members receive new or increased pensionable payments in the latter stages of their active service. The extra benefits derived can be considerable, for example, a firefighter aged 49 with 30 years' service will receive additional pension of £666 for every extra £1000 of pensionable pay, before commutation or £500 plus £3040 lump sum. The pension costs of such payments made at the end of a firefighter's service cannot be reflected in the contributions paid over the working life of the member but will create an index-linked liability for, possibly, decades in the future. Not a bad return for the investment by the employee of £111 for each year, but a very poor outcome for the taxpayer.

A further concern is that a member who has paid pension contributions on an element of pay which then ceases before the final three years of pensionable service gains no benefit from those contributions. This was the situation that would have arisen following the abolition of the Long Service Increment and became a possibility with the introduction of the Continual Professional Development allowance; and precipitated the introduction of the LSI and CPD Additional Pension Benefit provisions.

Current position

Rule G1 of the 1992 scheme defines the pensionable pay of a firefighter as the aggregate of the amount determined in relation to the performance of the duties of his role (whether as a whole-time or part-time employee).

The 2006 scheme provides a more qualified definition of the pensionable pay of a firefighter and specifically mentions the exclusion of any allowance paid on a temporary basis. Part 11, rule 1, defines the pensionable pay of a firefighter as the aggregate of (i) the pay in relation to the performance of the duties of the role except any allowance or emoluments paid on a temporary basis, other than payments in respect of CPD, and (ii) the permanent emoluments (including in the case of a retained firefighter, any retaining allowance).

This means that allowances or emoluments that are paid in addition to a firefighters' basic pay for the role and are temporary in nature, i.e. are specifically time limited; do not normally feature in pay; are subject to review and withdrawal, **should not be pensionable**.

Guidance on the various elements of pay and how they should be treated for pension purposes was included in the Guide to the New Firefighters'

Pension Scheme for Retained Firefighters. An extract from the document (which is available on our website: <http://www.communities.gov.uk/documents/fire/doc/retained.doc>) is Annexed for ease of reference.

Proposals

Three alternative approaches to address the concerns over the introduction of new pension liabilities would appear to be available.

The first would be to introduce an approvals process to assess and mitigate against cost implications for the schemes.

As regulator of the finance arrangements CLG would need to be consulted at an early stage when any proposals which may affect pension costs are being considered. This will enable CLG to consider the impact on the pension scheme and give appropriate advice. CLG would also be in a position to consult the Government Actuary's Department about the impact of past costs on the pension fund and where this would be substantial, an additional contribution could be levied on the relevant FRA to reflect these costs.

The second would be to prohibit the introduction of new pensionable allowances and emoluments.

Elements of pay that do not meet the definitions of pensionable pay in the pension schemes would not be permitted to attract pension scheme benefits. Any such allowances or emoluments which had been treated as pensionable would cease to be pensionable from a prescribed date and, in the case of any member who was receiving such an allowance or emolument at that point, pension contributions paid would be used to provide an Additional Pension Benefit. This would be similar to, and on the same basis, as the APB introduced in 2007 to counter the effects of the phasing out of the Long Service Increment).

The third alternative approach would be to adopt Additional Pension Benefit arrangements similar to those introduced in 2007 for CPD payments.

A firefighter could decide to use part of his/her additional pay to purchase additional pension. The amount of additional contributions paid in a year would receive an actuarially valued pension which would be index-linked and come into payment on retirement alongside the main pension benefits. FRAs have found the current methods of index-linking cumbersome and we would seek a simplified approach in any discussions with the scheme actuary.

Our current view is that allowances are best treated under Additional Pension Benefit arrangements where an authority has discretion as to whether any allowance is pensionable and shares the cost of providing

additional pension with the member through contributions allowing the member to build up a separate package of pension benefit linked to the value of any allowances received.

Clearly, the details of such an arrangement would need to be worked through and, in addition to meeting the needs of the service, would need to satisfy the requirements of HM Treasury and HM Revenue and Customs.

Comments are invited.

***Communities and Local Government
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NON-PENSIONABLE PAY: REGULAR FIREFIGHTERS

This list is for illustration purposes; it should not be taken as comprehensive

Payment/Benefit in kind	Grey Book reference
Reimbursement of expenditure	Section 4, Part E, paragraphs 1 and 2
Out of pocket allowance	Section 4, Part E, paragraph 3
Reimbursement of fines and costs	Section 4, Part E, paragraph 4
Driving licences	Section 4, Part E, paragraph 5
Car allowances	Section 4, Part E, paragraphs 6 to 11
Accommodation, rent, fuel and light allowances (including compensatory grant)	Section 4, Part E, paragraphs 12 to 14
Loss of, or damage to, private property	Section 4, Part E, paragraph 15
Mess manager's allowance	Section 4, Part E, paragraph 16
Provision of uniform and personal protection equipment	Section 5, Part A, paragraph 5
Supply/ reimbursement of cost of spectacles	Section 5, Part A, paragraph 6
Reimbursement of medical charges and expenditure	Section 5, Part B, paragraphs 5 and 6
Reimbursement of cost of doctor's statement	Section 5, Part B, paragraphs 22 and 23
Payments made in respect of a violent or criminal assault	Section 7, paragraphs 6 to 11
Pay for acting up. (Pay received for temporary promotion <u>will</u> count as pensionable pay.)	Section 4, Part B, paragraph 19
Additional responsibility allowance	Section 4, Part B, paragraphs 21 and 22
Payments in lieu of untaken leave	Section 4, Part C, paragraph 10
Payments in lieu of lieu days	Section 4, Part C, paragraph 24
Pay in lieu of notice	-

RETAINED DUTY SYSTEM FIREFIGHTERS	
Pensionable pay	Grey Book reference
Annual retainer	Section 4, Part B, paragraphs 5 to 8
Disturbance payment	Section 4, Part B, paragraph 9
The pensionable element is "single" time if the payment is at double-time for Public Holiday.	Section 4, Part C, paragraph 25
Payment for work activity. This could include not only call-out to an emergency incident, but also such activities as station administration, attendance at medicals, attendance at meetings (including union meetings only when meeting with management), community fire safety activities and cleaning.	Section 4, Part B, paragraphs 10 to 12
The pensionable element is "single" time if the payment is at double-time for Public Holiday.	Section 4, Part C, paragraph 25
Attendance at training centres	Section 4, Part B, paragraph 14 but not 15
Overtime. This will count, exceptionally, where the firefighter works in excess of 42 hours in a seven-day period but the pensionable element is "single" time if the payment is at time and half or double time.	Section 4, Part B, paragraphs 23 and 24
Annual leave pay	Section 4, Part C, paragraphs 3 to 6
Maternity leave pay	Section 4, Part D, paragraph 34
Adoption leave pay	As maternity leave pay
Paternity (maternity support) leave pay	As maternity leave pay
Sick leave pay	Section 5, Part B, paragraph 16

Non-pensionable pay	Grey Book reference
Compensation for remuneration lost	Section 4, Part B, paragraphs 13 and 15
Sick leave/compensation	Section 5, Part B, paragraphs 17

	and 18
Long service bounty payments	Appendix B, paragraph 7
Any element of pay treated as non-pensionable for regular firefighters.	See notes on regular firefighters above.

VOLUNTEER FIREFIGHTERS	
Pensionable pay	Grey Book reference
Basic hourly rate	Section 4, Part B, paragraph 18
The pensionable element is "single" time if the payment is at double-time for Public Holiday.	Section 4, Part C, paragraph 25
Attendance at training centres	Section 4, Part B, paragraphs 14 and 16

Non-pensionable pay	Grey Book reference
Sick leave/compensation	Section 5, Part B, paragraphs 17 and 18
Any element of pay treated as non-pensionable for regular firefighters.	See notes on regular firefighters above.

DAY-CREWING FIREFIGHTERS: RETAINED DUTIES	
Pensionable pay	Grey Book reference
Annual retainer	Section 4, Part B, paragraphs 7 and 17
Disturbance payment. The pensionable element is "single" time if the payment is at double-time for Public Holiday.	Section 4, Part B, paragraphs 9 and 17 Section 4, Part C, paragraph 25
Payment for work activity. This could include not only call-out to an emergency incident, but also such activities as station administration, attendance at medicals, attendance at meetings (including union meetings only when meeting with management), community fire safety	Section 4, Part B, paragraphs 10 to 12 and 17

activities and cleaning. The pensionable element is "single" time if the payment is at double-time for Public Holiday.	Section 4, Part C, paragraph 25
Annual leave pay	Section 4, Part C, paragraphs 3 to 6
Maternity leave pay	Section 4, Part D, paragraph 34
Adoption leave pay	As maternity leave pay
Paternity (maternity support) leave pay	As maternity leave pay
Sick leave pay	Section 5, Part B, paragraph 16

Non-pensionable pay	Grey Book reference
Any element of pay treated as non-pensionable for regular firefighters.	See notes on regular firefighters above.